

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 1999-279-C - ORDER NO. 1999-720  
OCTOBER 12, 1999

IN RE: Application of NorthPoint Communications, ) ORDER ✓  
Inc. for a Certificate of Public Convenience ) GRANTING  
and Necessity to Provide Local Exchange and ) CERTIFICATE  
Interexchange Telecommunications Services )  
within the State of South Carolina. )

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of NorthPoint Communications, Inc. (“NorthPoint” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide both local exchange resold and facilities-based telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1998) and the Regulations of the Public Service Commission of South Carolina.

By letter, the Commission’s Executive Director instructed NorthPoint to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. NorthPoint complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”). At the hearing on September 30, 1999, Margaret M. Fox, Esquire represented the SCTC. Glenn Harris, Assistant General Counsel for NorthPoint, testified that he was aware of previous orders of the Commission that contain provisions to assure telecommunications providers do not attempt to provide competitive services in areas served by rural telephone companies. In addition, Mr. Harris testified NorthPoint does not object to the inclusion of similar language being placed in this Order that has been contained in previous Orders of the Commission with respect to the protection of rural telephone companies. Thereafter, with Mr. Harris’ acknowledgement that NorthPoint does not have a problem with the inclusion of the stipulated conditions similar to the conditions the SCTC has with other companies, SCTC withdrew their witness, Mr. L.B. Spearman and his testimony. Further, SCTC requested the Commission to include the provisions from Commission Order No. 96-494, Docket No. 96-073-C in this Order.

A hearing was commenced on September 30, 1999, at 11:30 a.m., in the Commission’s Hearing Room. The Honorable Philip T. Bradley, presided. NorthPoint was represented by Jerry W. Amos, Esquire and Melissa Copeland, Esquire. SCTC was represented by Margaret M. Fox, Esquire. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

Glenn Harris, Assistant General Counsel for NorthPoint, appeared and offered testimony in support of NorthPoint’s application. Mr. Harris, after making one correction to the prefiled testimony of Mr. Michael Olsen, Deputy General Counsel for NorthPoint, adopted Mr. Olsen’s testimony. Mr. Harris corrected Mr. Olsen’s testimony by testifying

the Company is currently certified to provide telecommunications services in twenty-six states, not nineteen states. Initially, NorthPoint's service offerings will be x Digital Subscriber Line (xDSL) services. In addition, the Company's only customers will be Internet Service Providers (ISPs). NorthPoint will bill ISPs directly and their name will appear on the bill. They will not bill end-users directly for the Company's service. The Company plans to provide resold and facilities-based local exchange services. NorthPoint does not plan to offer dial tone services in the future.

Mr. Harris testified further that NorthPoint's existence will be in the public interest for South Carolina because the Company will provide South Carolina's small business and residential users broadband digital telecommunications services through increased competition which will ultimately improve the quality of telecommunications services and insure that prices are maintained at the lowest possible rate. Furthermore, NorthPoint will not use telemarketing to solicit customers at this time. The Company will market its services directly to the ISPs.

Through a series of debt and equity offerings, NorthPoint has raised over six hundred million dollars which they are using to reinvest in infrastructure throughout the country and also in South Carolina. The Company's managerial staff consists of executives from incumbent local exchange carriers and executives from entrepreneurial companies. Mr. Harris testified NorthPoint's managerial team is a blend of the established local exchange carrier expertise and the more aggressive and creative competitive local exchange carrier community. NorthPoint is currently providing its services in approximately twenty-six states. The Company monitors its network twenty-

four hours a day, seven days a week and its monitoring equipment indicates when there are problems with the network. NorthPoint's customer service department is available to its ISPs if the ISPs' end-users report any trouble. Finally, the Company requested the Commission to waive application of 26 S.C. Code Ann. Regs. 103-610 and permit NorthPoint to keep its records in San Francisco, California.

### **FINDINGS OF FACT**

1. NorthPoint is organized as a corporation under the laws of Delaware and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

2. NorthPoint wishes to provide local exchange services within the State of South Carolina.

3. The Commission finds that NorthPoint possesses the technical, financial, and managerial resources sufficient to provide the service requested.

4. The Commission finds that NorthPoint's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1998).

5. The Commission finds that NorthPoint will support universally available telephone service at affordable rates.

6. The Commission finds that NorthPoint will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by NorthPoint “does not otherwise adversely impact the public interest.” S.C. Code Ann. §58-9-280(B)(5) (Supp. 1998).

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NorthPoint to provide competitive intrastate local exchange services only to customers located in non-rural areas of South Carolina. NorthPoint may not provide any local service by its own facilities or otherwise to a customer located in a rural incumbent LEC’s service area, unless or until NorthPoint provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission’s own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from NorthPoint that it intends to serve a customer located in a rural incumbent LEC’s service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights

under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by NorthPoint pursuant to this Order without prior and further Commission approval.

2. NorthPoint shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Any proposed change in the rates reflected in the tariff for local services which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1998).

3. NorthPoint shall resell the services of only those LECs authorized to do business in South Carolina by this Commission.

4. NorthPoint shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. By its Application, NorthPoint requested a waiver of 26 S.C. Code Ann. Regs. 103-610 which would permit NorthPoint to keep its records in San Francisco, California. The Commission grants a waiver of this regulation. However, NorthPoint is directed to comply with all other Commission regulations unless expressly waived by the Commission.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs NorthPoint to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, NorthPoint, shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

7. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the

name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

NorthPoint shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment A shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

8. NorthPoint shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

9. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.



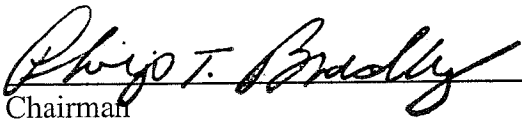
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10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director  
(SEAL)

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ATTACHMENT A

**INFORMATION OF THE AUTHORIZED UTILITY  
REPRESENTATIVES FOR INTEREXCHANGE, LOCAL  
AND AOS COMPANIES**

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION  
REGULATION 103-612.2.4(b), each utility shall file and maintain with the Commission  
the name, title, address, and telephone number of the persons who should be contacted in  
connection with Customer Relations/Complaints.

\_\_\_\_\_  
Company Name/DBA Name

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Authorized Utility Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
This form was completed by Signature

If you have any questions, contact the Consumer Services Department at 803-896-5230